

FILED
IN CLERK'S OFFICE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
2004 OCT 12 PM 4:05

04 12151 JLT

JANICE FLANDERS,

Plaintiff,

v.

LEVY HOME ENTERTAINMENT, INC.
and CHAS. LEVY CIRCULATING CO.,

Defendants.

MAGISTRATE JUDGE Cowley

CIVIL ACTION NO.

RECEIPT #

AMOUNT \$ 150

SUMMONS ISSUED N/A

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY. CLK. FOM

DATE 10/13/04

DEFENDANTS' NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446, Defendants Levy Home Entertainment, LLC, formerly known as Levy Home Entertainment, Inc., and Chas. Levy Circulating Co., LLC, formerly known as Chas. Levy Circulating Co. (collectively "defendants"), hereby notice the removal of the above-captioned matter from the Superior Court for Bristol, Department of the Trial Court of the Commonwealth of Massachusetts, Civil Action No. 04-00776-A. In support thereof, defendants state the following:

1. Defendant Chas. Levy Circulating Co., LLC was served with a copy of the complaint in this action on September 20, 2004.
2. Defendant Levy Home Entertainment, LLC was served with a copy of the complaint in this action on September 22, 2004.
3. True and correct copies of the complaint, summonses, civil action cover sheet, motion for appointment of special process server and clerk's notice of allowance thereof are attached hereto as Exhibit A and constitute all process, pleadings and orders served upon the defendants in this action.

4. In accordance with the requirements of 28 U.S.C. § 1446, this notice of removal is filed within thirty (30) days after defendants first received a copy of the initial pleading setting forth the claims for relief upon which plaintiff's action is based as set forth above.

5. Plaintiff Janice Flanders is an individual and resides in New Bedford, Massachusetts.

6. Defendant Levy Home Entertainment, LLC is a Delaware limited liability company with a principal place of business at 1930 George Street, Melrose Park, Illinois 60160.

7. Defendant Chas. Levy Circulating Co., LLC is a Delaware limited liability company with a principal place of business at 1930 George Street, Melrose Park, Illinois 60160.

8. Plaintiff's complaint alleges causes of action against the defendants under M.G.L. c. 151B § 4 for employment discrimination against her on the basis of age, disability and failure to accommodate, for wrongful termination, and for intentional/negligent infliction of emotional distress. In her complaint plaintiff seeks compensatory damages "for her financial and emotional damages" caused by the alleged discriminatory acts. In her statement of damages filed with the complaint, plaintiff itemizes documented medical expenses, and documented and anticipated lost wages and compensation in the amount of \$54,059.40. In addition, plaintiff describes the nature of her injury as "emotional and psychological injuries, including depression." Plaintiff also seeks attorneys' fees. Without admitting and expressly denying the validity of plaintiff's causes of action, it is clear that the amount in controversy in this action will exceed the sum of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

9. In accordance with 28 U.S.C. § 1332, there is complete diversity of citizenship between the parties, and the amount in controversy exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

10. Defendants respectfully ask that this action be removed to the United States District Court for the District of Massachusetts for further proceedings, as though this action had originally been instituted in that Court.

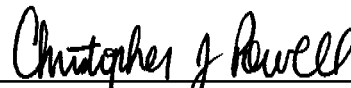
11. Pursuant to 28 U.S.C. § 1446(d), defendants will promptly file a copy of this notice of removal with the Clerk of the Superior Court, Bristol County, Commonwealth of Massachusetts, and will also serve a copy upon all counsel of record.

WHEREFORE, defendants Levy Home Entertainment, LLC and Chas. Levy Circulating Co., LLC request that the action now pending against them in the Superior Court of Bristol County, Department of the Trial Court of the Commonwealth of Massachusetts, Civil Action No. 04-00774-A, be removed to this court.

Respectfully submitted,

LEVY HOME ENTERTAINMENT, LLC,
and CHAS. LEVY CIRCULATING CO.,
LLC,

By their attorneys,



Dean Richlin (BBO #419200)
Michael L. Rosen (BBO #559954)
Christopher J. Powell (BBO #658884)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000

Dated: October 12, 2004

AFFIDAVIT OF SERVICE

I, Dean Richlin depose
and state that on this day a true
copy of the above document was
served upon the attorney of record
for each party ~~by mail~~ by hand
signed under the pains and penalties
of perjury.

Dated: 10/12/04 